



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,782	09/30/2003	Charles C. Freeny JR.	2551.079	4439
36589 7590 07/22/2009 DUNLAP CODDING, P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113				
EXAMINER DANNEMAN, PAUL				
ART UNIT 3627		PAPER NUMBER		
MAIL DATE 07/22/2009		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/674,782

**Applicant(s)**

FRENEY, CHARLES C.

**Examiner**

PAUL DANNEMAN

**Art Unit**

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 May 2009.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 7 and 17-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-4, 7 and 17-20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11 May 2009 has been entered.

**Response to Amendment**

2. Claims 1, 2 and 4 have been amended
3. Claims 10-13 have been canceled.
4. Claims 17-20 are newly added.
5. Pending Claims 1-4, 7 and 17-20 have been examined in this action.

**Response to Arguments**

6. The rejection of **Claims 10-13** has been rendered moot by Applicants' cancellation of the claims, therefore the rejection of Claims 10-13 under 35 USC § 103(a) is respectively withdrawn.
7. The rejection of **Claims 1-4 and 7** over Hunt is respectively withdrawn and the arguments are rendered moot based on the amendment of independent Claim 1 and the new grounds of rejection.

***Claim Rejections - 35 USC § 103***

8. **Claims 1-4, 7 and 17-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Frey et al., US 5,305,390 A hereinafter know as Frey and further in view of Beach et al., US 5,924,077 hereinafter known as Beach and further in view of McConnell et al., US 7,240,027 B2 hereinafter known as McConnell.

**Claims 1-4, 7 and 17-20:**

With regard to the limitations:

- ***Providing at least one sensor associated with a physical store, the sensor receiving information indicative of customer activity and automatically outputting activity signals indicative of such customer activity sensed by the sensor;***

Frey in at least Column 2, lines 48-59 discloses an invention for use in retail stores for generating information on the number of persons in the store at selected time intervals, the categories of those persons, and the way in which those categories relate to actual store performance.

- ***Receiving the customer activity signals automatically via a transaction computer and automatically generating an expected revenue signal indicative of expected revenue to be received by the physical store based upon the customer activity; and***

Frey in at least Column 2, lines 52-59 further discloses that the primary objective of any retail establishment is to maximize sales including the conversion of shoppers to actual customers.

Frey in at least Column 2, lines 60-67 further discloses that not all persons who enter the store are potential customers such as young children who are unlikely to make any purchases themselves. Frey in at least Column 3, lines 1-11 further discloses generating height profiles of persons or objects and converting the information to the number of shoppers based on height criteria and the number of non-shoppers.

Frey in at least Column 3, lines 12-44 further discloses the system automatically performing its functions and communicating the information, regarding shoppers in and out flow, to a central processing unit (CPU). Frey further discloses that the information is integrated with data from the store's point of sale (POS) system and other store computer management systems which provide number of sales (customers), dollar sales, times of sales, locations of sales, sales categories, labor hours and so on. The combined information may be used to generate management reports to assist management in evaluating store performance. The information may also be used to

optimize staffing for greater service, increase conversion rates, and improve dollar volume per transaction.

Frey does not specifically disclose generating an expected revenue signal based on customer activity, however Frey in at least Column 3, lines 45-67 further discloses evaluating advertising and special event effectiveness and conducting controlled tests to accurately measure the increased traffic created by individual advertisements, multi-media campaigns, sales events, or specific promotions and Frey can also be used to measure the impact from a competitors' 3advertising on a store's performance.

However, Beach in at least Column 2, lines 43-59 discloses an invention which is computer based and effectively monitors and processes data collected from point of sale (POS) of goods or services to facilitate the evaluation and management of the related business activities. Beach in at least Column 3, lines 2-20 further discloses the transformation of raw data collected by the electronic point of sale terminals and the derivation of one or more object values representative of a selected business activity (net sales, gross sales, etc.), comparing the object values with a corresponding set of saved reference values to determine and identify a pass condition representative of an acceptable comparison of object values and corresponding value, and a fail condition representative of an unacceptable comparison of object values and corresponding reference value, or a warning condition representative of a questionable comparison of object values and corresponding reference values.

- ***Generating an actual revenue signal indicative of actual revenue received by the physical store during the same time period encompassed by the customer activity resulting in the expected revenue signal, and comparing the actual to the expected revenue signals.***

Beach in at least Column 2, lines 55-59 further discloses an object of the invention is to alert the user to anomalous performance in select business activities and to allow the user to readily determine the cause of the anomalous performance. Beach in at least Column 2, lines 60-67 further discloses the comparison of objective values representing selected business activities (net

sales, gross sales, etc.) and compared to predefined reference values for the selected activities.

Beach in at least Column 9, lines 10-14 discloses some of the selected business activities as monitoring and processing hourly production, labor, and sales by department/group, price look up (PLU) group, customer service time and promotional sales activities. Beach in at least Fig.12, Fig.14 and Fig.18 discloses a handful of business activities and alerts that may be generated related to revenue, etc.

Therefore, it would have been obvious at the time of the invention, to one of ordinary skill, to combine the well known elements of Frey for determining the number of shoppers in a store with the well known elements of Beach for collecting and transforming POS data into object and reference values which are compared based on corresponding business activities to yield a pass, fail or warning condition.

**Claim 20:**

With regard to the limitation:

- ***Wherein the store control unit is established as a website communicating over the Internet.***

The combination of Frey and Beach do not specifically disclose the limitation above per se, however Frey in at least Column 3, lines 20-35 discloses transmitting the physical store customer activity information between a central processing unit (CPU) and a store controller or in-store processor (ISP) and integrated with POS system data and other store computer management systems. Frey further discloses in at least Column 4, lines 5-67 the use of the activity monitor in buses, airports, banks, museums libraries, government facilities, etc. Beach does not specifically disclose a website, however, in at least Fig.14 and Fig.15 discloses various business locations from which POS data is being collected. Beach in at least Column 6, lines 12-19 further discloses a polling subsystem 14 which collects raw data from POS terminals at various locations.

Therefore, it would have been obvious, at the time of the invention, to one of ordinary skill to combine Frey and Beach with the well known elements of McConnell's use of the Internet (Fig.1,

Column 8, lines 22-32 and Column 11, lines 56-64) for communicating POS data between store locations and a store manager along with alarms or alerts (Column 12, lines 29-41), with the motivation of supporting a multi-store business.

#### **Conclusion**

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:
- Johnson et al., US 6,067,525 teaches a sales-force automation system which integrates computerized, intelligent automated salesperson support. It includes a forecasting module which provides functional and product forecast information to the sales person related to sales, revenue, commission and profit sorted by accounts or products.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL DANNEMAN whose telephone number is (571)270-1863. The examiner can normally be reached on Mon.-Thurs. 6AM-5PM Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Paul Danneman/  
Examiner, Art Unit 3627

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627